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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re DAVID T., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE

Plaintiff and Respondent,

v.

DAVID T.,

Defendant and Appellant.

2d Juv. No. B173402  
(Super. Ct. No. J-59484)  
(Ventura County)

David T. appeals from an order committing him to the California Youth Authority (CYA) for a maximum term of three years ten months based on four sustained wardship petitions. (Welf. & Inst. Code, § 602.)<sup>1</sup> He contends that the trial court erred in imposing a principal term of three years for receiving stolen property (Pen. Code, § 496) because the court failed to declare the offense was a felony (§ 702). We affirm.

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<sup>1</sup> Unless otherwise stated, all statutory references are to the Welfare and Institutions Code.

### *Procedural History*

Appellant was declared a ward of the court on November 21, 2001, after he admitted a section 602 petition for possession of a deadly weapon. (Pen. Code, §12020, subd. (a).) The trial court granted probation and released appellant to the custody of his mother.

A subsequent section 602 petition was filed for battery (Pen. Code, § 242) on February 2, 2001. Appellant admitted the allegation and admitted violating probation. The trial court committed him to the Clifton Tatum Center (CTC) for 45 days and continued probation with electronic monitoring.

On October 2, 2001, a second subsequent section 602 petition was filed alleging commercial burglary (Pen. Code, § 459), receiving stolen property (Pen. Code, § 496, subd. (a)), and resisting a peace officer (Pen. Code, § 148, subd. (a)). Appellant admitted count 2 for receiving stolen property and admitted violating probation. The trial court dismissed count 1 (burglary) and count 3 (resisting a peace officer), committed appellant to CTC for 21 days, and placed him in a work, education, restitution, competency (WERC) program.

A third subsequent section 602 petition was filed October 29, 2002, alleging that appellant inflicted corporal injury on the mother of his child. (Pen. Code, § 273.5, subd. (a).) Appellant admitted the allegation, admitted violating probation, and was committed to CTC for six days. The trial court ordered placement in WERC for a period not to exceed 90 days and ordered appellant to participate in a domestic violence program.

On December 12, 2002, March 18, 2003, and May 23, 2003, appellant admitting violating probation for not obeying his probation officer, not attending a domestic violence program, failing to report to his probation officer, leaving the county, not obeying curfew, using marijuana, and associating with gang members. The trial court committed appellant to CTC and continued probation with drug testing.

On November 19, 2003, an amended notice of probation violation was filed alleging that appellant had not submitted to drug testing, failed to participate in a domestic violence program, used marijuana, associated with gang members, and possessed marijuana and drug paraphernalia. Appellant admitted violating probation and was committed to CYA for a principal term of three years based on the October 2, 2001 subsequent petition for receiving stolen property. The trial court imposed consecutive subordinate terms of four months for possession of a deadly weapon (original section 602 petition), two months for battery (February 2, 2001 subsequent petition), and four months for corporal injury on the mother of his child (October 29, 2002 subsequent petition).

### *Felony Finding*

Appellant argues that the trial court failed to declare that the receiving stolen property offense was a felony, as required by section 702.<sup>2</sup> Where the minor is found to have committed a "wobbler," the trial court must state whether the offense is a felony or misdemeanor. (*Ibid.*; *In re Manzy W.* (1997) 14 Cal.4th 1199, 1204.)

In *In re Manzy W*, *supra*, 14 Cal.4th at p. 1209, our Supreme Court held that remand is not " 'automatic' whenever the juvenile court fails to make a formal declaration under Welfare and Institutions Code section 702. . . . [T]he record in a given case may show that the juvenile court, despite its failure to comply with the statute, was aware of, and exercised its discretion to determine the felony or misdemeanor nature of a wobbler. In such case, when remand would be merely redundant, failure to comply with the statute would amount to harmless error. . . . The key issue is whether the record as a whole establishes that the juvenile court was aware of its discretion to treat the offense as a misdemeanor and to state a misdemeanor-length confinement limit."

Appellant asserts that the trial court failed to determine whether the receiving stolen property offense was a felony or a misdemeanor. We disagree. At the

October 18, 2001 disposition hearing, the trial court stated: "This offense is a felony -- hang on. It could have been a misdemeanor. I guess it's not. So I'm concluding that it's a felony without - while knowing that it could have been otherwise.

The October 18, 2001 disposition order, which was signed by the trial court, states: "Pursuant to Juvenile Court Rule 1494(a), the Court finds the offense to be a felony."

We conclude that the trial court satisfied section 702 and properly exercised its discretion. (See, eg., *In re Robert V.* (1982) 132 Cal.App.3d 815, 823 [felony determination based on signed order sufficient].) The alleged error, if any, is harmless. (*In re Manzy W.*, *supra*, 14 Cal.4th at p. 1209.)

The judgment (CYA commitment order) is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

COFFEE, J.

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(Fn. cont'd.)

<sup>2</sup> Section 702 states in pertinent part: "If the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony."

John Dobroth, Judge  
Superior Court County of Ventura

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California Appellate Project, under appointment by the Court of Appeal,  
Jonathan B. Steiner, Executive Director and Richard B. Lennon, Staff Attorney, for  
Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Lawrence  
M. Daniels, Susan Lee Frierson, Deputy Attorneys General, for Plaintiff and Respondent.